

JPRS 81933

6 October 1982

Worldwide Report

LAW OF THE SEA

No. 210



FOREIGN BROADCAST INFORMATION SERVICE

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OFFSHORE DRILLING PROGRAM PLANNED NEAR BARROW ISLAND

Canberra THE AUSTRALIAN in English 13 Aug 82 p 9

[Article by Bruce Jacques]

[Text]

A CONSORTIUM led by Occidental Petroleum expects next month to embark on a large offshore drilling program in West Australian waters just off Barrow Island.

The group is committed to a three-year program involving 14 wells, and although it is not certain how many wells will be drilled in the first year, the cost could top \$40 million.

Oxy is bringing in a rig from Singapore, the Maersk Valiant, which is expected to be under tow this weekend, arrive on site later this month and be ready to spud by September 1.

The Maersk Valiant is a large jack-up style rig capable of drilling in water depths from 5m to nearly 100m - just the sort of depth variation Oxy expects to encounter in its program.

The consortium, which includes the Bond group, Pelsart, Ranger, Reading and Bates and Texas Eastern, is budgeting for the all-up cost of the program to be about \$120,000 a day. The first few targets have already been selected.

Oxy, as operator, is working

on the basis that the Barrow Island field is not unique and similar reservoir conditions exist elsewhere in the hydrocarbon province.

The Barrow field has about 26 different reservoirs and Oxy believes even small oil accumulations in the area could be economic.

This is mainly because of the shallow water and the fact that oil has been discovered at such depths. The prospect of utilising some of the Barrow Island infrastructure could also help the economics of any operation.

In other drilling developments, the newly-formed Cluff Oil (Pacific) Ltd, will today begin a deep water seismic survey in the offshore Western Australian permit WA171P in the north Perth Basin.

The survey will use the Eugene McDermott seismic vessel and will be followed a week later by a shallow water survey using the vessel, Banksia.

About 550km will be shot in the deep water and 100km in the shallow water.

CSG: 5200/7556

EXMOUTH PLATEAU OIL EXPLORATION PLAN DROPPED

Canberra THE AUSTRALIAN in English 16 Aug 82 p 1

[Article by Bruce Jacques]

[Text] THE Esso-BHP consortium has dealt petroleum exploration a serious blow by pulling out of a \$60 million drilling program on the Exmouth Plateau because of a disagreement with the West Australian Government.

The partners relinquished both their Exmouth areas, WA-9 6P and WA-97P, when they failed to agree on permit terms after negotiating with the State Government for more than eight months.

And Esso-BHP's action may lead to another consortium led by the Hudebay group relinquishing its Exmouth permits.

Reserves

Already, groups led by both Woodside and Phillips have dropped expensive exploration programs on the Exmouth Plateau after failing to find oil.

The depressed business climate will make it extremely difficult for the State Government to find another consortium prepared to spend as much money as Esso and BHP.

The consortium was planning a three or four well drilling program costing at least \$60 million but it is understood the Government wanted the companies to stick close to their original exploration plans.

When the Exmouth permits were issued in the late 1970s the plateau, off the northern coast, was regarded as the country's last chance for a significant new oil strike to replace dwindling Bass Strait reserves.

It was believed that if oil was found on the plateau, reservoirs would be big because of the large structures in the area.

At the time, five consortiums made unprecedented exploration commitments to win the permits. Esso-BHP's plan involved a 21-well program to cost about \$128 million.

The plateau has turned out to be a deepwater exploration graveyard, with more than \$200 million being spent on "dusters", or unproductive holes.

Esso-BHP drilled eight wells in 1979 and 1980 and

costs increased to about \$110 million, more than twice the budget.

Naturally, the consortium was reluctant to drill the extra 13 wells envisaged in the original program, although it has since accumulated more seismic data in an attempt to find potential wells.

The consortium believed it had identified a few more areas worth drilling and that its revised three to four-well program was reasonable in view of Woodside and Phillips pulling out.

Precedent

Esso and BHP have other large exploration commitments, notably a \$160 million program in Bass Strait.

The State Government apparently conceded there was a strong technical argument for reducing the program but felt that to release the consortium from its original obligations while allowing it to retain the area would set a dangerous precedent.

CSO: 5200/7556

ONGC PLANS INSTITUTE FOR SEABED EXPLORATION

New Delhi PATRIOT in English 15 Aug 82 p 6

[Text]

DEHRADUN, Aug 14 (PTI).

THE Oil and Natural Gas Commission (ONGC) will set up an institute of engineering and ocean technology to explore the sea-bed more comprehensively for offshore oil.

This was announced here today by the ONGC chairman Col S P Wahi after releasing a special P and T stamp on oil exploration.

Establishment of this institute will provide necessary infrastructure for exploiting latent oil potential in various basins of the country, he said.

Col Wahi said India has tremendous oil potential in the Krishna-Godavari Basin, Cauvery Basin, Ganga Valley and in Rajasthan.

Before the turn of the century, he said, the country will be self-sufficient in oil which was vital for the economy. He said the ONGC was working on a 20-year oil exploration and production plan for harnessing oil potential in the country.

Col Wahi said the 10-year accelerated oil exploration and development plan prepared by the commission calls for a massive effort for exploring oil from the womb of the earth. Ninety per cent cost of the plan would be met by the internal resources of the commission, he added.

The commission, he said, had so far trained about 29,000 personnel engaged in oil exploration and production.

Col Wahi also laid emphasis on conservation of oil and development of alternate sources of energy both conventional and non-conventional.

The Institute of Drilling Technology, Institute of Reservoir Studies, and the K D Malaviya Institute of Petroleum Exploration are at present under the commission.

CSO: 5200/7052

OFFSHORE MINERAL EXPLORATION INTENSIFIED

New Delhi PATRIOT in English 13 Aug 82 p 5

[Text]

CALCUTTA, Aug 12 (PTI)—Side by side with intensified search for minerals like copper, nickel and cobalt on land, the Geological Survey of India is turning its attention to off-shore resources which, according to it, may ultimately turn out to be the mainstay of the future.

With this object in view, the GSI is currently engaged in getting a 90-metre long vessel, "Vishwa Vinay," made in West Germany, converted and refitted with modern equipment to undertake marine surveys, according to a GSI release here.

The release said that the remodelled research vessel, which would facilitate systematic geological and geophysical mapping and exploration of geological

resources of the sea-bed within the exclusive economic zone of the country, was expected to go into operation by the end of 1982.

Vast and varied mineral resources of India, the release said can meet the rapidly growing industries of the country. But the identified resources of

certain minerals are not large and cannot meet the present demand or the ever increasing requirements of a fast developing country.

This deficiency is particularly noticeable in non-ferrous and some alloying metals like copper, nickel and cobalt. The GSI's programme for sea-bed search for resources are drawn up in this context, the release added.

Scientific studies and exploration carried out on the ocean floor resources of the earth have brought out the presence of vast mineral occurrences which can meet mankind's demands for several years. The recently accelerated work to supplement the rapidly declining land deposits has reached a stage where such exploitation is feasible, it said.

According to the release, the identification of tin-bearing geological formations in the continental shelf areas and the discovery of polymetallic manganese nodules on the ocean floor have sustained the efforts to look for such deposits.

CSO: 5200/7051

FISHERIES THREATENED BY DYNAMITING

Colombo THE ISLAND in English 23 Aug 82 p 3

[Article by B.C. Perera]

[Text]

Fisheries resources in the coastal areas around Sri Lanka, as well as those inland are threatened with extinction due intensive unlawful dynamiting of fish, a report from the National Aquatic Resources Agency informed the Minister of Fisheries, Mr. Festus Perera.

The NARA report pointed out that the use of explosive for fishing in coastal waters as in inland waters had become a major threat to both fish as well as plant life. The biggest danger posed was the destruction to the fish habitats which promoted fish breeding.

The Minister of Fisheries Mr. Festus Perera, when asked about this alarming situation pointed out that the existing laws lacked "teeth" to deal deterrently and adequately with the problem, now reported to be virtually out of control around Sri Lanka. Mr. Perera said that he would press for heavier punishments with fines and mandatory jail sentences. He would

be bringing in adequate legislation to deal with the problem because of the enormity of the problem now.

On the directives given by the Fisheries Minister the NARA launched a task force at Trincomalee on the eastern coast where the problem had become serious. The task force included officers from the Police, Navy and the NARA. They have now confirmed the alarming increase in the use of dynamite for fishing. The Task Force discovered in certain areas over one hundred sticks of dynamite.

Dr. Arthur C. Clarke, the well known Science fiction writer, under water explorer and the Chancellor of the Moratuwa University had also informed the NARA of the danger of the extensive use of dynamite for fishing. He has also reported of the extensive destruction of corals and other forms life in the sea and inland water areas, due to the use of explosives.

CSO: 5200/5677

BRIEFS

SEIZED FISHING BOAT'S CREW HELD--CAPE TOWN--An urgent attempt is being made to secure the release of the 19 crew of the 44-ton Cape Town-owned fishing boat Plumstead, who are in jail in Maputo after being found guilty of operating inside Mozambican territorial waters. Mr Hugo Prigge, owner of the 37-year-old vessel, which is based in Durban, said he had made urgent application to the Mozambican authorities for a visa to allow him to travel to Maputo, where he intended appealing against the conviction. "As I understand it, the Mozambican court officials based their findings on allegations that the Plumstead had been noted operating in Mozambican waters 18 times, but this is not true," he said. "The boat moved its operational base from Cape Town to Durban only 10 months ago and this was the first time I had sent it up the Natal North Coast. It has been operating mainly off the Natal South Coast." [Excerpt] [Johannesburg THE CITIZEN in English 9 Sep 82 p 11]

CS0: 5200/5678

AGREEMENTS WITH FOREIGN COUNTRIES CONCERNING FISHING IN NATIONAL WATERS

Dakar LE SOLEIL in French 12 Jul 82 /Supplement/

[Text]

Senegal has considerable fisheries resources but not, unfortunately, the means to develop them exclusively. Consequently, in order to take fullest advantage of them, it issues international fishing licenses pursuant to agreements signed with European and African countries.

Industrialized countries having appropriate technology but no fisheries resources are more than satisfied, especially since they profit in every case. Having estimated the limitations to be respected so as to allow for reproduction of existing species, Senegal is endeavoring to make the most of usable resources not yet developed.

Fish, as is known, are not like other resources, and after two years, if they do not die, they can migrate, as tuna has done. So by calling on foreigners to engage in fishing, we derive some profit, pending the time when we shall be sufficiently equipped to do it ourselves. Fishing agreements have been signed with the EEC, Spain, the Ivory Coast, and Guinea Bissau. The latter two countries have not yet acted on the agreement: the first because it would be very costly for Ivorian boats to come and fish in Senegalese waters in view of the high price of gas-oil in Abidjan, and the second owing to non-signature of the protocol.

Reduction in Licenses

The agreements just renegotiated with Spain and the EEC are particularly characterized by reduction in the number of fishing licenses issued, following the increase in the number of Senegalese fishing boats. The authorities are trying as best they can to equalize those numbers. But following denunciation of the agreement with Poland, problems are arising concerning exploitation of small pelagic species, since the Senegalese do not venture far offshore. In consequence the balance is now broken on that point.

For, with respect to each country signing an agreement with Senegal, determination is made of the tonnage of tuna boats, trawlers, or frozen tuna boats,

to be allowed to fish certain species, and the portion of the catch which must be landed to permit local seafood processing industries to operate.

In the case of the EEC, for example, tuna boats totaling 3,000 gross tons are required to land their catch, while trawlers of 2,150 gross tons are based at Dakar. Community tuna boats with freezing equipment must in addition land 23,300 tons of tuna in Senegal, in contrast to trawlers with freezing facilities which fish all year without being required to land their catch. Their total tonnage is 5,000.

The agreement signed with Spain concerns the same types of fishing. Awaiting authorization to fish under the agreement are 46 tuna boats with freezing facilities, totaling 45,900 gross tons; 20 fresh fish trawlers totaling 6,400 tons; and probably 10 whalers.

Financial Compensation

Species concerned are essentially tuna, which is migratory; deep-water shrimp, which are caught by few Senegalese boats; and dark hake, which is of no value to Senegal since it is consumed only in Andalusia and not elsewhere in Spain.

Countries signing fishing agreements pay financial compensation to Senegal, in addition to providing technical assistance. In the case of the EEC, for example, compensation is 2.5 billion for the two year period of the agreement. The EEC also participates in the research and training program, and pays higher dues than those charged Senegalese nationals.

Spain pays 2.3 billion, participates in training and research, and provides boats for training. In addition, a third of each boat's crew must be Senegalese maritime personnel.

This year's innovation consists in taking on board Senegalese observers to verify types of fish caught, areas fished, tonnage, etc. Finally, the agreement objective is no longer signed. Instead, complete renegotiation is conducted to obtain maximum profit [as published].

Apart from licenses granted pursuant to fishing agreements signed with other countries, domestic boats wishing to fish in Senegalese waters must also be licensed. They must be as modern as possible: under 7 years old for wooden and less than 14 years of age for iron hulls.

Only boats of over 1,500 gross tons are denied fishing authorization. This decision was taken out of concern to protect local fishing industries, for refrigerated boats, being fully equipped, do not need to use local infrastructures.

The preference of the Oceanographic and Marine Fisheries authorities, no doubt, is for boats which ice their catch, and which supply national processing plants.

DANISH COURT UPS FINES FOR FRG BOATS FISHING OFF GREENLAND

Copenhagen BERLINGSKE TIDENDE in Danish 30 Jun 82 p 3

[Article by Ib Eichner-Larsen]

[Text] Yesterday the Supreme Court imposed a fine and corresponding confiscations on two FRG shipmasters for illegal cod fishing off Greenland. Karl Friedrich Egner, 53, of Fischbach, was fined 200,000 kroner and 1.7 million kroner in confiscation, while Karl Otto Erwin Behrmann, 36, of Cuxhaven, was fined 250,000 kroner and 900,000 kroner in confiscation. Moreover, the shipmasters must bear the costs. The cases were brought before the Supreme Court after the two lower courts had made diverging decisions with the aim of establishing uniform future guiding lines for fines and confiscations in such cases. For that reason, the grounds of the decision are quite detailed.

In the Egner case, the Supreme Court declares, among other things, that the need to take into consideration the preservation of the fish stock in the Greenland waters as well as the currency devaluation speak for an increase of the present level of fines. Further, "Counteracting offences of this character must primarily be made through precautions directed against the person profiting from the fisheries. The court considers 200,000 kroner a suitable fine, taking into consideration, among other things, the size, capacity, and equipment of the ship." Further, it says that due to the peculiar conditions for the investigation and prosecution of illegal fishing, the demands must be directed solely at the shipmaster concerned also in behalf of the shipping company so that the company guarantees the fine and the confiscation before the ship leaves Greenland. Under these circumstances, it is found that confiscation of the profit of the company may take place during the case. The confiscation will be done according to the value of the illegal catch at the time of seizure without deductions for an eventual processing. As the Naval Fisheries Inspection and the Greenland authorities have authority to order the foreign vessels to the nearest harbor for inspection, it is found that the price should be fixed according to prices in Greenland's harbors.

It is further added in the Behrmann case that the value of the equipment used is to be confiscated at 200,000 kroner as Behrmann has acted in behalf of the company. Nordsee Deutsche Hochseefischerei, Ltd., has put up a guarantee for the fine and confiscation of 2 million kroner of the ship "Heidelberg," of 2,556 gross register tons. Hanseatische Hochseefischerei has put up a

guarantee of 3 million kroner for Egner's ship, the "Geeste," of 3,576 gross register tons. The Greenland High Court sentenced Egner to pay a fine of 500,000 kroner and 1,970,000 in confiscation, while the High Court of East Denmark Ostre Landsret fined him 125,000 kroner and a confiscation of 1,043,000 kroner. Behrmann was fined 600,000 kroner and a confiscation of equipment of 1.4 million kroner by the Greenland High Court. The High Court of East Denmark fixed the fine at 125,000 kroner and the confiscation at 386,910 kroner, but rescinded the confiscation of the equipment as it was not owned by the shipmaster.

9892

CSO: 5200/2087

FRG, DENMARK NEARING COD WAR OVER WEST GREENLAND FISHERIES

Greenland Leader: May Interrupt FRG Visit

Copenhagen BERLINGSKE TIDENDE in Danish 31 Aug 82 p 1

[Article by Ole Schmidt Pedersen]

[Text] The cod war between Denmark and West Germany began in earnest yesterday when the EC Commission gave its permission to the West Germans to catch the first 2,000 tons of cod off West Greenland.

"Politically, it is an unfortunate thing for the EC and West Germany to provoke Greenland in the area of the fishing policy. In so doing, they give Greenland its last kick out of the EC," says Poul Tørring, president of the Danish Association of Fish Processors and Fish Exporters.

Poul Tørring says, incidentally, that the decision by the EC Commission is based on an extremely dubious interpretation of the present fishing regulations. He says that the consequence must be for the Danish government to allow mackerel fishing contrary to the EC quota.

Denmark has already lodged its protest against the decision by the EC Commission. However, it is not conceivable that the supreme authority of the EC, the Council of Ministers, will set aside the decision. The Council of Ministers has already received a proposal from the EC Commission for a total West German quota of 10,000 tons off West Greenland.

The chairman of the local Greenland government, Jonathan Motzfeldt, stated after an emergency meeting last night that if German trawlers arrive off the west coast of Greenland, he will immediately cancel his visit to Federal Chancellor Helmut Schmidt.

Danish Prime Minister Sees 'Provocation'

Copenhagen BERLINGSKE TIDENDE in Danish 1 Sep 82 p 7

[Article by Lisbeth Knudsen]

[Text] The Danish government is seeking to force West Germany to agree to a solution through negotiations to the cod war off West Greenland, but the government has finalized instructions for the Danish fisheries inspection vessels for actions if the West German government fails to keep the German fishermen away from the area. The fisheries inspection vessels are already in Greenland waters.

"It looks like a provocation," the prime minister said yesterday after the approval by the EC Commission of West German fishing off West Greenland yesterday morning. The Danish government finds the decision legally untenable on concrete points and yesterday afternoon sent another note of protest to the West German federal chancellor and minister of fisheries as well as another one to the EC Commission.

"We now expect that the Germans will not start fishing in the area. However, we have worked out instructions for the inspector of fisheries, but it would not be reasonable for me to make any statements as to what may happen if it comes to the worst," the prime minister says.

After receiving the report on the approval by the EC Commission of West German cod fishing of 2,000 tons off West Greenland, the Danish government was yesterday in contact with the EC Commission and with the local Greenland government. At a meeting of ministers, it was, subsequently, decided to work out still another note of protest, containing detailed written grounds for the protest, to the West German government and the federal chancellor as well as a note of protest to the EC Commission.

The Danish government protests against the approval of the fishing on the basis of a proposal from the EC Commission which has not yet been approved by the Council of Ministers. The Danish government, furthermore, protests against the application of the so-called 'roll-over arrangement' as an argument for the approval. The arrangement implies that agreements from previous years be temporarily extended when no new agreements have been made. The government draws attention to the fact that the West Germans have not been fishing cod off West Greenland since 1978. "Under these circumstances, one can hardly claim that it is a question of rights as a result of a roll-over arrangement," Anker Jørgensen says.

To the EC Commission, the Danish government will protest against the fact that a single commissioner on duty signed the approval for the West German government. In the opinion of the Danish government, the decision could at the earliest be made at the next meeting of the EC Commission to be held on 8 September. However, the government is of the opinion that the decision cannot be made by the EC Commission alone but ought to await a meeting of the Council of Ministers to be held on 21 September. "The decision ought to have awaited a legal solution or a total clarification of the future fishing policy of the EC," says Anker Jørgensen.

After the meeting of ministers, Minister for Greenland Affairs Tove Lindbo Larsen stressed that Greenland has been approved as a so-called preferential status country within the EC, and that the decision by the EC Commission, therefore, is the more open to criticism.

Minister of Fisheries Karl Hjortnæs says that the decision by the EC Commission following the government's position is illegal. He states that there are Danish inspection vessels in the Greenland waters if West Germany decides to allow its fishermen to proceed to West Greenland, and that it will probably take the West German fishermen 2 days to reach the area.

7262

CSO: 5200/2121

INTERNATIONAL AFFAIRS

DENMARK, FRG REACH AGREEMENT ON GREENLAND COD DISPUTE

Schmidt Recognizes Special Greenland Problems

Copenhagen BERLINGSKE TIDENDE in Danish 16 Sep 82 Sect III p 5

[Article by Klaus Justesen]

[Text] The new Danish minister of foreign affairs, Uffe Ellemann-Jensen, is getting high marks for his initial performance on the international political scene. Especially the West Germans have given expression to their recognition of the Danish minister's efforts during the difficult fishery negotiations late last Tuesday.

High-ranking German sources tell BERLINGSKE TIDENDE that they were both impressed and astonished that the new minister had managed to acquaint himself so soon with the details of a most complicated and circumstantial issue. Also the Danish minister's skill as a negotiator was praised.

At a cabinet meeting yesterday, the German government approved of the agreement. At the said meeting, Federal Chancellor Helmut Schmidt stressed that the German government appreciated Greenland's special problems. This statement supports the understanding that it is an implicit part of the agreement that, in the upcoming negotiations of association for Greenland with the EC, West Germany will support Greenland's wishes for a preferential status.

High-ranking Danish sources yesterday expressed their great satisfaction with the result of the prolonged negotiations. A few of them thus admitted that the result was better than they had dared hope for beforehand. From the Danish side, it was recognized that West Germany held many trump cards.

At the same time, the Danish sources warn that the dispute has not yet been finally solved. Such a solution may only be found when the EC Commission anew submits a proposal for the total quantity of cod to be fished off West Greenland and its distribution. West Germany has, so far, been granted 5,000 tons but will, undoubtedly, demand more when the temporary agreement expires in early November.

It is, at the same time, certain that the EC will now drop its legal proceedings against Denmark. The spokesman for the West German government, Klaus Bolling, stated yesterday that there, simply, is no longer any basis for the two

cases. Also the German government guarantee of indemnity for damage to the fishing tackle of German trawlers in case of capture has been dropped.

The next step will be a move from the EC Commission in Brussels. Denmark adheres to the demand that no more than a total of 62,000 tons of cod may be caught off West Greenland. West Germany wants a larger quantity. However, judging from the positive spirit prevailing during the meeting last Tuesday, it seems that a compromise is within reach.

Paper Comments on Danish Negotiators

Copenhagen BERLINGSKE TIDENDE in Danish 16 Sep 82 p 8

[Editorial: "The Cod Peace"]

[Text] Karl Hjort ~~was~~ talks like a flatfish with both corners of its mouth on the same side of its head, and the results become accordingly. From one corner of his mouth, the former minister of fisheries says that the new minister of foreign affairs has sold out Greenland's fishery interests since, as a novice, he slipped on the polished floors of the international arena. And, from the other corner of his mouth, he utters, with a gurgling noise, that Ellemann-Jensen is certainly not to take the credit for the solution to the cod war which he brought home with him from Bonn, for it was an inheritance from the former government--it was the compromise arranged by former Minister of Foreign Affairs Kjeld Olesen. If he is right in making the latter claim, and that is, of course, possible, the former government must, in his opinion, also have been in the process of selling out Greenland's interests, and, then, only its departure prevented it from disavowing its minister of fisheries itself.

The essential thing, however, is that the cod war between Denmark and Greenland has been called off on a reasonable basis and with the full support of the Greenland home rule government. The German high-sea fleet will, in the course of the coming 6 weeks, be permitted to catch a bit of the cod quota which the Greenlanders themselves have not been able to catch this year. This obligingness does not cost the Greenland home rule government anything, and it will not harm the fish stock. It will not prejudice subsequent fishery agreements, but it will result in some degree of relaxation prior to the coming negotiations on the joint fishery policy. The legal proceedings brought by the West German government against Denmark before the EC court of justice will be dropped, and the evaluation on the part of the experts of advisable and permissible fishing will be taken up for renewed consideration. And, by way of obligingness on the part of the West Germans toward Greenland, the West German government has promised to take a positive attitude toward the question of special arrangements for Greenland once it withdraws from the EC. This is not a promise which will cost the West Germans anything today, but it, nevertheless, is of value.

If the main lines of this compromise were arranged by the former minister of foreign affairs during his talks last week with Under Secretary Wischniewski, Kjeld Olesen is welcome to his share of the credit. The government had been maneuvered into an entirely untenable position by its minister of fisheries, who

stuck so stubbornly to his lonely corner on the polished floors as if he had pitch under the soles of his shoes. It was necessary for mobility to be recreated in the policy of the government, and if Kjeld Olesen did arrange the disavowal of Karl Hjortnes which Uffe Ellemann-Jensen came to carry out, it is an unusual but beneficial expression of continuity in the Danish foreign policy.

Greenland Fishermen Express Worry

Copenhagen BERLINGSKE TIDENDE in Danish 16 Sep 82 Sect I p 1

[Article by Claus Kallerup]

[Text] They Fear an Invasion by Foreign Fishing Fleets

The Association of Greenland Deep-Sea Fishermen completely disagree with the evaluation by Emil Johansen, member of the local Greenland government, that allowing West German fishing of 5,000 tons of cod off Greenland's west coast will not lead to any invasion by foreign fishing fleets in pursuit of cod off West Greenland.

"With the agreement entered into, the Greenland waters have been thrown open to fishing which, in the opinion of the Association of Greenland Deep-Sea Fishermen, will start a landslide of wishes and demands from abroad on the Greenland fish resources," it says in a statement from the Association of Greenland Deep-Sea Fishermen.

The statement goes on to say: "Greenland has achieved nothing really through the present agreement but, in the opinion of the Association of Greenland Deep-Sea Fishermen, has lost its possibilities, in the long run, to base the country's existence and economy on Greenland's present main industry, the fishing industry."

The association goes on to say: "In the present 'cod case,' West Germany has acted in a very provocative manner and has clearly demonstrated how rich industrial countries are, at any time, ready to oppress the weak nations, just for the sake of their own gains."

Comments from the Organization of Greenland Fishermen, Sealers and Whalers, the KNAPK, do not indicate either that they are confident that the agreement will not go beyond the quota of 5,000 tons, as agreed upon now.

Karl Olsen, chief of the secretariat of the KNAPK, tells BERLINGSKE TIDENDE:

"This arrangement will start a landslide; in support of their demand for fishing off West Greenland, the West Germans have cited historical rights. Now they have got their permission. What will then hold back other nations which have previously been fishing sporadically off West Greenland? We are convinced that the West Germans will not stop at the 5,000 tons once they have got started."

On the Greenland radio yesterday, Lars Emil Johansen, member of the local Greenland government, defended the agreement by stating that, due to climatic conditions, the Greenland fishing fleet has not been able to use up its own quota, and,

therefore, there was no longer any basis for the argument to hold back the West Germans.

"An agreement based on the fact that the Greenland fishing has been poor is, in no way, something to be happy about. But we have limited the damage which would otherwise have happened," Lars Emil Johansen said, having in mind the West German demand for an increase in the total cod quota from 62,000 tons to 75,000 tons.

For the rest, the political comments on the agreement are subdued. However, the following derisive comment was made by the extremist Inuit Ataqatigiit [a radical youth group]: "The local government has been barking like a leading sledge dog but is now whimpering like a puppy."

FRG Reactions to Agreement

Copenhagen BERLINGSKE TIDENDE in Danish 16 Sep 82 Sect I p 1

[Text] From the reactions in Bonn it appeared last Wednesday that the compromise recently arranged with Denmark on the much disputed cod fishing off West Greenland is in West Germany regarded as a West German victory.

The Danes do not agree with this evaluation, as appeared from Klaus Justesen's report on the events in Bonn last Tuesday night.

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CSO: 5200/2122

ADVISOR VIEWS RESULTS, CONSEQUENCES OF LOS CONFERENCE

Hamburg AUSSENPOLITIK in German No 3 1982 pp 243-262

[Article by Uwe Jenisch: "Law of the Sea Convention--Consequences, A German Viewpoint"]

[Text] The new Convention on the Law of the Sea [LOS] was adopted on 30 April 1982 in New York. Following 9 years of discussions, the Third LOS Conference of the United Nations was concluded, the new treaty system will change economic and geographic relationships in the world in a manner which may only be compared to the age of colonialization. Dr Uwe Jenisch of the Ministry of Economics and Transportation of the Land of Schleswig-Holstein, who took part in the conference sessions as an advisor of the German LOS delegation, also participated in the final session in New York. He followed and analyzed all developmental stages of the LOS Conference in this periodical in a uniquely continuous and complete manner. Now he is taking a look at the problems of the implementation and the realization of the new convention.

There is not doubt that the formal signing of the convention in December 1982 in Caracas will receive a qualified majority; subsequently the treaty will be known by the brief title of Caracas Convention. Nevertheless, 141 yes-votes in New York are opposed by 21 important states which are not willing to join the consensus but are expected to provide 60 percent of the UN budget. Among them are, from the "conference group of the five," the big Western industrial states--the United States, the United Kingdom and the FRG. As a matter of fact, because they are in the majority, the developing countries more or less succeeded in getting their way with respect to all items and procedures for the future regulation. For many countries the result are disadvantageous and will lead to serious consequences. The contents of the convention includes a division into zones and a nationalization of the ocean's resources by setting up coastal waters, economic zones and continental-shelf

zones. Such a division leaves almost nothing for a country like the FRG. With the establishment of the UN Seabed Authority, deep-sea mining is functionally entering the new economic world order. It is a model decision in favor of new worldwide economic organization and administration structures. For the first time the United Nations will be given an instrument, in the form of the Seabed Authority, to control supranational tasks and to function as a commercial enterprise. Because of the existing majority, Western industrial states--the FRG was again included--were not able to get any liberal positions adopted. The only positive expectations relate to the preparatory investment protection for so-called pioneer investments for deep-sea mining which are made before the convention becomes effective. It concerns the recognition of exploration and mining areas in favor of those countries which are currently the first ones to enter the threshold of deep-sea mining, and among them is also the FRG.

1. Adoption of Convention on 30 April 1982

On Friday 30 April 1982, at the seat of the United Nations in New York, the Third UN Law of the Sea Conference was concluded with the adoption of a new LOS Convention under the energetic leadership of the conference president Koh (Singapore).¹ During 9 years of negotiations, requiring 11 sessions and a total of 93 weeks--the 11th session lasted from 8 March to 30 April 1982--approximately 160 states were arguing over a new law of the sea, which is now seeking universal recognition. It is called the Convention on the Law of the Sea, contains approximately 320 articles,² 9 appendices and 5 resolutions, combining in one convention a total package of all marine products and all areas of the seas--in other words, 70 percent of the earth's surface.

During the final session, 120 states voted in favor of the adoption of the convention, among them were almost all of the developing countries and 11 industrial countries (Denmark, Austria, Switzerland, Ireland, Sweden, France, Japan, the Netherlands, Australia, Canada and New Zealand). The United States, Israel, Venezuela and Turkey voted against it for various reasons. Seventeen Eastern and Western industrial countries abstained. They were: Belgium, Bulgaria, White Russia, the CSSR, the GDR, the FRG, Hungary, Italy, Luxembourg, Mongolia, the Netherlands, Poland, Spain, Thailand, the Ukraine, the Soviet Union and the United Kingdom. The voting pattern shows that the EC states did not vote uniformly. The overwhelming numerical majority of those in favor must not hide the fact that 21 important states, which represent 60 percent of the UN budget, were not willing to join the consensus. It is therefore unlikely that the result of the vote will sustain a permanent regulation.

It also reduces the chances for solidifying the convention content, either as a whole or in part, while it is in the process of being shaped into a common law.

According to the timetable of August 1981,³ the adoption of the convention at the end of the 11th session had been preceded by 3 weeks of informal negotiations which dealt with U.S. requests for changes⁴ in deep-sea mining. On 2 April 1982, the Collegium (the conference president and the committee chairmen) submitted a memorandum⁵ which already contained the essential elements of the later proposal. It was followed, on 7 April 1982, by the consensus procedure,⁶ during which the transition to the formal procedure was accomplished. As a consequence, formal proposals for changes could be submitted until 14 April 1982 to be voted upon later. Thirty-one proposals were made,⁷ but they were no longer considered seriously. On 23 April 1982 the collegium submitted a second memorandum⁸ with minor changes and on the same day the conference decided that all efforts had been exhausted to reach a general consensus. According to the rules of the procedure this procedural step was necessary to enter the phase of voting. Although the decision was again made in the consensus procedure--i.e., without a vote--Belgium, France, the FRG, Italy, Japan, the United Kingdom and the United States declared in vain that in their opinion not all possibilities of negotiation had been exhausted.¹⁰ On 26 April 1982 there was to be a vote on the proposed changes, but the conference president succeeded in persuading all but three petitioners to forego a vote.¹¹ This waiver in conjunction with all the other proposals concerning the deep-sea regime also took care of the American-German proposals for deep-sea mining,¹² a proposal by Zaire concerning user rights for fishing in neighboring economic zones,¹³ a proposal for registering and licensing procedures for warships passing through foreign coastal waters¹⁴ and the proposal for establishing a Common Heritage Fund.¹⁵ Two proposals were voted down, one submitted by Spain¹⁶ concerning straits and one by Turkey¹⁷ on the proviso clause.

On 29 April 1982 the conference president submitted his third memorandum,¹⁸ which contains additional improvements for the authority's own mining company--called "Enterprise"--and he appealed to all participants to accept by consensus his proposals contained in his three memoranda as well as the convention draft. The United States, however, insisted on a vote by roll call,¹⁹ which followed on 30 April 1982.

According to the internal procedural regulations of the LOS Conference (rule 39)²⁰ the ratification of the convention marks the end of the substantial negotiations. The mandate of the UN General Assembly of 16 November 1973 "...to adopt a convention..." (Resolution 3067 XXVIII) has been fulfilled. In agreement with rule 39, which specifies a qualified two-third majority for the adoption of the convention, 130 yes-votes met this requirement. The conference had been planning for a long time to consider the possibility of adoption by consensus, as an exception to rule 39--as is apparent from the footnotes to articles 309 and 310 in the convention draft--but on the basis of the above-mentioned petition by the United States it reverted to the ratification by vote.

The vote led to complex results. There is still no final text of the convention but only a package of different documents and diverse corrections. The convention text alone is the combination of five documents.²¹ In addition there are five resolutions listed below which, without being a part of the convention, are still inseparably connected with it.²²

--Resolution I on the establishment of a preparatory commission for the Seabed Authority and the LOS Court (Documents L 94 and L 132/Add 1);

--Resolution II on the preparatory investment protection for pioneer activities in seabed mining (Documents L 132/Add 1 and Cor 1 as well as L 141/Add 1);

--Resolution III on the rights and interests of territories that are not yet independent (Document L 94);

--Resolution IV on the rights of recognized national freedom movements (Document L 132/Add 1);

--Finally, there is a fifth resolution which was submitted by Peru in the name of the Group of 77 and which contains recommendations on the development of national sea exploration, technology and service programs for developing countries.²³

Resolutions (decisions) are usually political resolutions by international organizations and conferences. As a rule there is no implementation clause, a ratification by national parliaments is dispensable, rights and duties for states do not apply until the signature indicates ratification, and thus they become a valid international law for the signatory states.

The four resolutions are in part analogous to sections in the convention, which refers on various occasions to the resolutions; for instance, in article 308, section 4 and 5 with respect to the validity of the decree for deep-sea mining, in article 1 until the part dealing with participation rights, in article 305 and appendix IX also concerning participation rights and in articles 156, section 3, and 319, section 3, with respect to the observer status for freedom movements.

2. Timetable for Realization of Convention

At the present time it is not possible to predict whether the front will remain of those countries who rejected the convention or abstained from voting. Whereas the Western industrial countries rejected the consensus for reasons of general dissatisfaction with the deep-sea regulations, the East bloc countries based their abstention on the alleged disadvantages for the Soviet sea-bed mining consortium as contained in the preliminary investment protection (cf. 4.2)--not a very convincing argument.

The near future will show whether a carrying majority of states will produce the political will for this law of the sea, which can only be realized in peace. As a result, all governments will have to face the question of examining their own interests in the seas, of taking stock and evaluating the situation, which in spite of 9 years of negotiations has to date not been done sufficiently--at least no in the FRG--especially when the long-term political and economic effect is taken into consideration of this conference of the century which will change the economic and geographic relationships of the world in a manner which at best is comparable to the age of colonialization.

For the time being--for procedural reasons--it is still a long way anyway until the convention can be implemented. The adoption of the text in New York only marks the end of the diplomatic negotiations on international law.

2.1 Editorial Committee

The large number of documents which still contain open questions and unclear passages now need to be summarized by the editorial committee and put in legible form in the languages for UN negotiations and documents. An example for the unreadiness of the texts, among other things, is the fact that the German delegation has not succeeded to date to establish the correct designation of the seat of the LOS Court, which according to available information is to be located in Hamburg; the reason is Soviet resistance.²⁴

The work of the editorial committee requires an additional five weeks of negotiations from 13 July to 13 August 1982 in Geneva. On 22 September 1982 the Plenary Session of the LOS Conference will reconvene in New York for 3 days as a continuation of the 11th session to authorize the work of the editorial committee. Subsequently convention texts ready for signatures, including the final act, will be prepared in the UN languages. It is expected that this year's General Assembly of the United Nations will conclude the conference on the basis of a report by Conference President Koh and charge the secretary-general with the preparations for the signing of the final act and the convention.

2.2 Signing of the Final Act in Caracas

Between 6 and 10 December 1982, the ceremonial signing of the final act is to take place in Caracas, the capital of Venezuela which voted against the convention. The final act, the contents of which has not yet been negotiated, is--apart from the contents and text of the convention--the ceremonial final conclusion to the diplomatic negotiations on international law, in other words, it is the formal ratification of the convention by signing the final act. The contents of the final act will essentially consist of a procedural inventory of the conference history, in other words, a listing of the sessions, dates, participating states and a presentation of conference organizations. It does not provide any legally binding effects.

2.3 Signing of Convention

As soon as the final act has been signed, the states also have the option of signing the convention which, in accordance with article 305, will be available for signing for a period of 24 months in the Venezuelan Ministry of Foreign Affairs or at the UN headquarters. Following this 24-month period, the right to join later remains unrestricted according to article 307. The signing makes the text official. From that moment on the binding effect is restricted to the rule that signatory states are not permitted to undertake anything that might endanger or even make impossible the later implementation of the treaty. During the signing of the final act and the convention there are also opportunities to submit formal interpretation

statements, which are now being prepared in all capitals. As a matter of principle and in accordance with article 309, legally stronger proviso clauses are not permitted. Agreements are regularly quoted according to the date of signing. It is the reason why this convention is later to be called Caracas Convention.

2.4 Ratification and Implementation

According to article 306, the convention requires the ratification by national parliaments or appropriate organs. The significance of the ratification is the formal declaration of the state toward the other treaty partners that it is legally bound by the agreement. In other words, the ratification is the final conclusion to the negotiations of the treaty.

The preparatory commission will begin its work of preparing for the implementation as early as 60 to 90 days after the 50th state has signed the convention (cf. 4.1 below). It could be the case as early as the end of 1983.

According to article 309, the convention will go into effect 1 year following the 60th ratification or declaration of consent and it will become international law between the treaty partners. From that moment on the organs of the convention, in other words, the Seabed Authority and the LOS Court must be in operation. It is predicted that the point in time will be somewhere between 2 and 5 years from now. States that do not ratify the agreement are not bound by it, unless over a long period of time the treaty content or parts of it attain universal common-law acceptance.

3. Contents of New LOS Convention

The comprehensive and detailed changes which will be the result of the new Law of the Sea have been discussed here regularly and extensively. The following section will therefore be limited to a quick evaluation of the entire convention with special emphasis on the final negotiation results.

The main characteristic of the Law of the Sea is the large variety of geographical and functional changes. In contrast to the old LOS convention of 1958, which always regulated only separate aspects of the Law of the Sea, the new convention includes every use of the sea for all areas of the sea; it is contained in one treaty, designed to be effective worldwide. The existing, old Law of the Sea will be integrated into the newly created agreement. The concept of the 200-nautical-mile economic zone or the deep-sea regime are now creations of this kind, whereas the coastal expansion to 12 nautical miles can already be justified today by referring to its as common law.

Law of Sea Zones

With respect to geographic-territorial aspects the division of the oceans into zones is in the foreground: 12-nautical-mile-wide coastal waters are within the national territory of coastal countries; 200-nautical-mile-wide

exclusive economic zones and the continental-shelf zones that reach beyond it--in some instances they can be extended to the edge of the deep sea--lead to the nationalization of the economically most valuable and most easily attainable resources (fish, petroleum, natural gas, minerals), including massive privileges in ocean exploration and environmental protection; with respect to economic zones a small change was made during the 11th session when a British proposal was adopted, which called for weakening the requirement of removing unused installations (article 60, section 3).²⁵ Traffic rights for civilian and military navigation, however, remain free. In the view of traditional seagoing nations from East and West, military exercises, maneuvers and similar activities in foreign economic zones also remain permissible.

Clear LOS dividing lines exist only for seaward borders of coastal waters and economic zones but not for continental-shelf zones, which according to article 76 can extend to 350 nautical miles for shelves that are more than 200 nautical miles wide or (alternately) if the lines extend 100 nautical miles seaward, it can cover a depth of 2,500 meters and in case of submarine mountains it can go further seaward. The details are to be settled by a continental-shelf border commission. The border between overlapping neighbors or opposite sea zones "are to be established," according to articles 74 and 83, "through agreements based on international law,... to find a just solution."

It is difficult to imagine how this practice is to lead to satisfactory results, considering the latitude of measures and disputes about sea areas and resources, unless the negotiating partners are of good will and ready to agree on a compromise solution.

A complicated law dealing with straits subdivides the more than 100 straits in the world into five different categories and according to article 38 the right of passage for all kinds of ships, planes and cargo--which includes also military vehicles--is only granted freely in the case of so-called transit straits. With respect to the Malacca Strait, which is navigationally particularly difficult, the neighbors and the most important shipping countries (except for the Soviet Union) agreed to stay at least 3.5 meters from the shore.²⁶ The formal proposal by 30 states, led by Romania,²⁷ to require registration and permission for the passage of warships through foreign coastal waters for security reasons developed into a key question during the 11th session, and the conference could have failed because of it. The United States and the Soviet Union and their respective alliance partners made it very clear that in case of such a clause they would not join the convention under any circumstances; the remaining maritime nations emphasized the fact that the generous expansion of the coastal waters would have to be "reimbursed" at any rate by granting free passage. The 30 states withdrew their proposal before the final vote.

In spite of the fact that traffic rights are being maintained, the division of the oceans can no longer be stopped. According to the economic zone regulation, 10 states of the world receive 54 percent of all economic zones,²⁸ a group of approximately 90 states, depending on geographic

conditions, receives only small sea areas of varying sizes, but 55 geographically disadvantaged and inland states, among them are both German states, receive practically nothing.

Functionally it is therefore noticeable that states with long coastlines that have their own sea areas and own resources are favored in an unbearable fashion at the expense of the community of states, whereas, on the other hand, a large group of "landlocked countries" will be cut off permanently from the blessings of the oceans. New conflicts about sea areas and resources among the haves and between the haves and the have-nots have practically been preprogrammed by the new Law of the Sea. The Falkland War as well as the Aegean conflict are the first current examples. Additional conflicts are feasible; for instance, in the Caribbean, in the East Asian peripheral seas as well as the European peripheral seas.

3.2 Deep-Sea Regime

The mineral resources of the deep seas outside the limits of national jurisdictions, particularly cobalt, nickel, iron, manganese nodules containing manganese, will be under the jurisdiction of the UN Seabed Authority in Jamaica, while the use of the water areas in this international zone remains free.

Functionally the new Law of the Sea means the beginning of the new economic world order, which for the first time might be realized sectoral in the area of deep-sea mining and be binding through international law. During the final negotiations in New York in Spring 1982, the United States and several industrial countries did not succeed in realizing their goal, which was to liberalize substantially the economic plan and bureaucratic set-up of the deep-sea regime; it is marked by price and quantity regulations and rights, the monetary and technological transfer and the voting rights dominance of the developing countries. Only a few items of the package of requests for changes, which was submitted jointly by the United States, the FRG, Italy, Belgium, the United Kingdom, France, and Japan,²⁹ were adopted. As a consequence, according to article 161, section 1a, the United States is now getting a guaranteed seat (as the biggest consumer state) in the 36-member Council of the Seabed Authority. According to article 155, section 3, the revision conference now needs a three-fourth instead of a two-third majority to make a binding decision. As a result, later fundamental changes about the deep-sea regime can become binding for the FRG even without its approval. Nevertheless, the text has been improved insofar as so-called "pioneer investors" in seabed mining are given guaranteed rights even before the implementation of the convention (cf. below, 4.2). In article 151, section 4 and in article 162, section 2n, the moratorium for the mining of raw materials other than manganese nodules has been limited to a period of 3 years, with the consequence that exploitation remains "free" unless implementing regulations are issued within 3 years.

Terrestrial raw material producers who could suffer from deep-sea mining³¹ are getting more rights for codetermination in article 164, section 1 and financial compensation options in article 171f. Essentially unchanged are the regulations for technology transfer, financial contributions and application and licensing procedures.

How soon the technologically demanding seabed mining will be worthwhile financially, will depend on price levels and the availability of terrestrial depositories. The earliest possible date will be no sooner than the early or middle 1990's before any kind of deep-sea mining worth mentioning is expected. Consequently, the deep-sea discussion which burdened and dominated the conference in an almost unbearable manner is for the time being nothing more than a model decision in favor of new global economic organization and administration structures, including considerable financial burdens that are placed on the states in the form of contributions, and initial estimates for the FRG are frighteningly high. The deep-sea regime is a historic decision insofar as the United Nations for the first time has an instrument in its hands which, in the form of the Seabed Authority, is given supranational control tasks and, as an enterprise, has commercial functions--a totally new phenomenon in the international system.

Proof of the correctness of this solution is left to the obscurity of the future. Already now the justified desire among developing countries for a bigger share of use of the seas appears to have failed because of the territorialization of coastal water zones in favor of a few states with long coastlines and because of the bureaucratization of deep-sea utilization through international law. The search for alternate organizational forms of deep-sea mining will have to continue, at least in the circles of the industrial states, including the Soviet Union.

3.3 Transit Rights/Environmental Protection/Settling of Disputes

Among the positive results of the conference are the establishment of transit rights for landlocked states and regulations concerning the pollution of oceans--which are certainly considered sensible by Germany--as well as legal settlements of disputes with the help of obligatory, appropriate legal and arbitration procedures.

In part X of the convention, landlocked states without access to the sea have for the first time an internationally established claim to transit rights for all transportation routes, the modalities of which are to be negotiated separately for each case with the transit state.

Environmental protection of oceans, which today is already regulated through a number of sectoral and regional conventions and which is in better shape than terrestrial environmental protection, is affected by 45 articles in part XII, receiving a progressive framework legislation, which is geared to uniform worldwide standards of purity and contains step-by-step rules for intervention and control. Especially pollution resultant from shipping is regulated in detail. Control and implementation regulations of coastal states against environmental violators of the shipping industry are increased and expanded over a wider area in a moderate and appropriate manner.

Unfortunately it was not possible to come up with a similarly structured and well-balanced regulation on scientific exploration of oceans, which must precede any sensible utilization of the sea and which would have been in the interest of all mankind. According to part XIII, exploration rights for economic and continental-shelf zones are almost exclusively the prerogative of the coastal states.

In part XV the regulation on international legal settlements of disputes which--as is well known--has to date been highly incomplete and nonbinding, has for the first time been given an institution, the International LOS Court in Hamburg, which under certain circumstances has obligatory jurisdiction over decisions on important disputes over rights on the seas, for instance, in the area of traffic rights and deep-sea rights. Economically interesting areas, for instance, border disputes over dividing lines on the seas, fishing and exploration rights and disputes involving military craft are unfortunately outside the obligatory legal dispute regulation. It was possible, however, to close this gap partially through obligatory or at least voluntary arbitration and mediation procedures. More could not be accomplished, considering the current degree of integration of the community of nations.

3.4 Joining Rights (Participation)

Following many years of discussions, the conference also reached a consensus on joining and participation rights for states, for independently administered associate states, for dependent territories, for Namibia, for recognized national freedom movements and for international organizations.³² The East-bloc states and the "group of 77" maintained until the very end the connection between joining rights for international organizations, as for instance the EC, and joining rights for freedom movements.

Joining Rights According to Article 305

In the final version of article 305, the LOS convention will be open for signing to several categories of states and to international organizations. Every state has the right to sign and also--listed separately as a special case--Namibia, represented by the United Nations Council for Namibia,³³ which has already participated in the LOS Conference since 1980 with full voting rights. The acceptance of the special case of Namibia also applies to Namibia's membership rights in the Preparatory Commission³⁴ and is in correspondence with the new article 1 bis, which declares the convention applicable for mutatis mutandis for all nonstate signatories of the convention; in this manner a complete equalization with those states which are eligible to join is expressly avoided.

Furthermore, the right to join is also granted to independently administered associate states and territories which, although they lack complete independence, have jurisdiction over areas subject to the Law of the Sea.

Finally international organizations are listed. Their right to sign the convention is in accordance with the eight articles in appendix IX³⁵ which, as is the case with all appendices, is an integral component of the convention. This "EC clause" defines international interstate organizations to which member states assigned internal and external LOS functions, including the right to conclude international agreements. The organization can sign with its own name if a majority of the member states have given their signatures. At the time of signing it must indicate the competency to which it is legally empowered; it presupposes delicate internal negotiations within the EC, which will have to establish whether it will be -elegated to carry out any of these functions and specifically which LOS competencies it will be entitled to assume in the territorial zones of its member states. As long as the organization adopts the right and duties of the convention, it is not obligated to discriminate in its internal regime (for instance, in the so-called EC sea) between citizens of its member states, even if not all of the member states should have ratified the convention.³⁶ The membership of the organization is neutral with respect to the voting right for departments of the LOS convention and it is not included in the 60 ratifications required for putting the convention into effect.

Dependent Territories

For the remaining colonial territories, the convention text wanted to reserve rights to resources in a transitional provision exclusively favoring the population of these territories. This idea of protecting the interests of the population is now the subject of Resolution III³⁷--and thus it has been excluded from the convention. The resolution states that in the case of sovereignty conflicts over these territories, consultations with UN cooperation are urgently stipulated to protect the maritime interests of the inhabitants.

Recognized Freedom Movements

The goal of the developing countries of granting to freedom movements full rights to join the LOS convention failed due to the resistance from the industrial countries. The resulting compromise in Resolution IV³⁸ provides the right to sign "as an observer" only for the final act, not the actual convention and it only applies to freedom movements which participated in the conference. They are SWAPO, the ANC, the PLO and the Pan Africanist Congress (PAC). In addition, the freedom movements receive observer status in the Preparatory Commission³⁹ and the Assembly of the Seabed Authority⁴⁰ and in other convention departments; furthermore, according to article 319, section 31, as observers they receive all reports and documents. Until the end Israel opposed these efforts⁴¹ to use the LOS Conference as a vehicle for upgrading the freedom movements and for this reason it voted against the convention.

4. Instruments for Transitional Period

4.1 Preparatory Commission/Prepcom Resolution 1

The transitional period--which will last several years--until the LOS convention goes into effect following the deposition of the 60th ratification document on one hand and the agreement on the preparatory investment protection for starting seabed operations on the other hand, necessitates the establishment of a Preparatory Commission. Its tasks will be the preparation of personnel, functional and organizational aspects of the Seabed Authority and the LOS Court as well as processing the first applications by pioneer investors. The most important task in this connection is the preparation of international rules and regulations for the application and licensing system of seabed mining (so-called security law).

The departure point for the consultations on a preparatory commission was a resolution draft by the conference president from the 10th session⁴² (for lack of time it could not be discussed at that time). During the 11th session the "working group of 21,"⁴³ the nuclear group of the First Committee under the chairmanship of Engo (Cameroon) as well as the plenary group of the conference discussed the proposal in detail. In his first memorandum of 2 April 1982,⁴⁵ the president repeated a slightly changed version of his proposal from the 10th session, at which time he was supported by the "group of 77" and the East bloc. The five Western industrial countries submitted on 13 April 1982 proposals for changing the entire deep-sea system, which also contained, among other things, changes for the resolution draft of the Preparatory Commission,⁴⁶ but on 26 April 1982 it was withdrawn.⁴⁷ With minor additions and linguistic revisions by the editorial committee⁴⁷ the decision on the establishment of the Preparatory Commission was adopted as Resolution I by the known majority.

Contents of Resolution for the Establishment of the Preparatory Commission

The Preparatory Commission for the Seabed Authority and the LOS Court will convene for the first time between 60 and 90 days following the 50th ratification of the convention (item 14⁸). The commission consists of representatives of the states that signed the convention (item 2). The signing of the final act, which the industrial countries would have preferred for membership,⁴⁹ only entitles to observer status in the Preparatory Commission. Therefore whoever wants to take part in the commission, has to decide in favor of signing the convention. The commission chooses its chairman (item 3); it has its own legal body (item 6) and can appoint subcommittees (item 7 and 8), among them special committees for the preparation of "Enterprise" and for dealing with the problems of those developing countries which as land producers might be affected unfavorably through deep-sea mining when it comes to their ability to compete (item 9). Normally the commission meets at the seat of the Seabed Authority--which is Jamaica (item 12)--and the UN Secretariat makes available the services of the secretariat (item 15).

The tasks of the commission are specified in detail (item 5):

a. Preparation of the first session of the Assembly and the Council of the Seabed Authority;

- b. preparation of the procedural regulations for Assembly and Council;
- c. proposal for the first budget;
- d. proposal for the relationship to other international organizations;
- e. recommendations for the secretariat of the authority;
- f. studies on the preparation of the headquarters of the authority;
- g. preparation of the legal regulations (secondary rules) for the authority;
- h. implementation of the system for preliminary investment protection (pip system);
- i. studies on developing countries that are particularly affected economically, including the establishment of a compensation fund.⁵⁰

The disputed question as to what constitutes a majority whenever the Preparatory Commission is to make decisions, has been solved temporarily by referring (item 4) to the procedural regulations of the LOS Conference, but it is hardly practicable; one need only remember the cumbersome wrestling of the LOS Conference. With this in mind, the Soviet Union⁵¹ demanded--particularly with respect to the important secondary rules--that the commission must decide by consensus; but later it withdrew this proposal. The Western industrial countries demanded⁵² that the voting system of the Council of the Seabed Authority (varying majority depending on the subject to be voted on, in accordance with article 161, 162) be transferred to the Preparatory Commission to bring to bear the weight and experience of mining countries on the formulation of the legal regulations. This proposal took care of itself when it was withdrawn during the plenary session on 26 April 1982. Thus, as far as the decisionmaking process of the Preparatory Commission is concerned, in the end the majority of its members--in correspondence with the LOS Conference--decides, and these decisions can only be changed later by consensus in the Council of the Seabed Authority--in other words, all 36 council members have the veto right.

The financing of the Preparatory Commission is supplied by the regular UN budget--in other words, not by the signatory states of the convention (item 14). In the fall of 1982 difficult fiscal deliberations are expected in the UN, because approximately 60 percent of the UN budget is represented by states that did not ratify the convention.

With respect to the preparation of the LOS Court, the Preparatory Commission must put together a report with recommendations (item 10). The tasks of the Preparatory Commission end with the end of the first session of the Seabed Authority; its tasks will then be transferred to the Seabed Authority.

Thus, the construction and mandate of the Preparatory Commission fully reflect the wishes of the developing countries. The industrial countries did not succeed in having their wish granted, according to which mining

countries would be assured an appropriate level of influence. Membership and voting rights are arranged in such a manner that the industrial countries are forced to sign and ratify the convention, while the developing countries on the basis of their numerical superiority can dominate the Preparatory Commission; the East bloc--like all the other states--has a veto right on important decisions.

4.2 Preparatory Investment Protection (Pip/Tpi System)

The preparatory investment protection for so-called pioneer investments in deep-sea mining, which are made before the convention goes into effect, was among the open questions of the 11th session. The issue is the preliminary international recognition of large-area exploration and mining territories in favor of the states or firms and consortia which are currently the first ones entering the threshold of realizing manganese-nodule mining. Until the convention goes into effect, the preparatory investment protection requires a kind of "protection procedure" to guarantee exploration and exploitation rights in "one's own" fields. The implementation of this procedure is to be in the hands of the Preparatory Commission,⁵³ the rights and duties of which are the object of discussion for a separate resolution. This topic was developed during the 11th session and became known under the English abbreviation of "pip" (preparatory investment protection) or--less common--"tpi" (treatment of preparatory investment⁵⁴) and was one of the focal points of the conference, because a pip solution acceptable to all sides would, on one hand, permit an uninterrupted continuation of deep-sea work by interested states and consortia--thus incorporating national interim legislations in an international regulation--and, on the other hand, permit a workable registration procedure preceding the implementation of the extraordinarily complicated part of the convention dealing with deep-sea mining. Furthermore, a contributing factor may also have been the hope of many conference participants--including some of the developing countries--that a pip system which would satisfy the industrial countries would result in a more flexible attitude on the part of the United States.

The pip system, the justification of which was expressly emphasized by Engo, chairman of the First Committee,⁵⁵ must, among other things, solve problems that are in part based on the north-south relationship:

--The relationship of the convention to the national interim laws and to the planned reciprocal agreements of the deep-sea mining states;

--modalities of transfer from the pip system to the convention;

--validity of convention principles on production limits, technology transfer and financial burdens for the pip phase;

--definition of pioneer investors, taking into consideration the interests of developing countries and of "Enterprise."

On the Procedure of the Pip Negotiations

All departments and state groups of the 11th LOS session were occupied with the preparatory investment protection. The information given below provides an overview on the progress of the negotiations. A presentation of the contents of the different proposals and positions will have to be reserved for later treatment because of the great number and the size of the documents and because of the confidentiality of some of the negotiations. A decisive factor is the result of the resolution text outlined below, which was adopted by the conference on 30 April 1982.

The industrial countries of the "conference group of five" (the United States, the United Kingdom, France, Japan, the FRG) agreed at the beginning of the 11th session to prepare a joint pip proposal, which began on the basis of a list of topics submitted by Germany. Following difficult negotiations among the five mining states, initially four industrial countries (without France) submitted a proposal⁵⁶ which was introduced in the First Committee and in the "work group of 21"; Belgium, Italy and the Netherlands added their support. Additional resolution drafts came from the "group of 77"⁵⁷ and from a group of smaller Western industrial countries, the "group of 19."⁵⁸ France developed additional concepts with respect to how national pioneer investors could support the authority-owned "Enterprise" by assisting with the personnel during its formation.⁵⁹ From the discussion on these papers the conference president developed his own ideas in his memorandum of 2 April 1982.⁶⁰ The presidential paper was subsequently the subject of internal negotiations by the Western industrial nations among themselves and with the Soviet Union, after it had become clear that the Soviet Union also considered itself a member of the circle of pioneer investors. On 13 April 1982 (the final day for submitting formal proposals for changes) the "conference group of five," with the support of Italy and Belgium, presented its ideas on the deep-sea regime and especially also on the pip system;⁶¹ they were later discussed by a small negotiation group under the chairmanship of President Koh. Joint EC presentations on these questions were not possible.

At the same time the Soviet Union unexpectedly passed its own national interim law⁶² on deep-sea mining; thus, it followed the example of the United States, the FRG, France and the United Kingdom. India was the first member of the developing countries which succeeded in gaining recognition as a pioneer investor during the negotiations on 16 April 1982 by pointing to its past exploration accomplishments. In addition to the international deep-sea mining consortia headquartered in the United States:

- Kennecott Consortium (United States, United Kingdom, Canada, Japan);
- Ocean Management Associates, OMA (United States, Belgium, Italy);
- Ocean Management Incorporated, OMI (United States, Canada, FRG, Japan);
- Ocean Minerals Company, OMCO (United States, Netherlands);

--Association Francaise pour l'Etude et la Recherche des Nodules, AFERNOD (France);

--Deep Ocean Minerals Association, DOMA (Japan);

--Soviet Consortium;

--Indian Consortium.

All these eight consortia⁶³ are interested in a preliminary investment protection and in the reservation of their own exploration fields. Their fields are in the Clarion-Clipperton belt between Hawai and Mexico. The only exception is the Indian field, which is located in the Indian Ocean. Furthermore, a circle of possible additional applicants includes the People's Republic of China⁶⁴ and Brazil.

The eight pioneer investors mentioned above are listed by the name of their home states in the proposal⁶⁵ that was presented and accepted by the president at the end of the 11th session and which also contains two guaranteed mining fields for "Enterprise," only one of them, however, is to be financed by the industrial countries.⁶⁶

Contents of Pip Regulation

States which belong to the circle of pioneer investors and signed the convention have the right (item 2⁶⁷) to be registered with the Preparatory Commission as pioneer investors for manganese-nodule mining (but not for other seabed reserves), if certain objective criteria are met (item 2).

The definition of the exclusive group of pioneer investors named (item 1a) the four states--France, Japan, India and the Soviet Union--with state organized seabed mining. In addition there is the category of seabed mining organized by the private economy, the four consortia, the members of which are located in the eight states of Belgium, Canada, the FRG, Italy, Japan, the Netherlands, the United Kingdom and the United States. Both categories must have invested at least \$30 million before 1 January 1983, which has to be verified by the applicant as a "certifying state." In the case of the international consortia it is sufficient if one of the signatory states makes the application (item 2). Furthermore, any developing country can be considered a pioneer investor belatedly, as long as \$30 million have been invested by 1 January 1985. For international co-sortia a specific rule is in effect (item 4), according to which the individual partners have no claim for registration, but they have only one claim to a joint registration. (Consequently there will not be a "German field.") A change in nationality of the consortia and their partners, however, is permissible (item 10).

This complicated formula was necessary to win the seabed-mining ambitions of all interested parties for one uniform pip system. Nevertheless, it is expected that there will be considerable criticism, because it discriminates against states in many different ways: Among the absurdities is the fact that

the Soviet Union and India, who have only been involved in minimal deep-sea activities, have the good luck of being treated as equals with other investors. Japan is even getting its own field in addition to its cooperation in an international consortium. Seven states, without Japan, who are partners of the four U.S. consortia have to share four mining fields. Smaller industrial countries, for instance, the GDR or Sweden, are excluded from the very beginning from the role of pioneer investors. Because of relaxed conditions for developing countries—who can invest until 1985—they can join the circle of pioneer investors later, in case the quantity restrictions on deep-sea systems permit it.

The proposed pioneer area, for which confidential exploration data—that are to be treated as such—have to be submitted to the Preparatory Commission, must not exceed 150,000 square kilometers. After a few years, the applicant is obligated to return step-by-step 50 percent of the explored areas, so that it can later be used by the authority (item 1e). The proposed area must be large enough for two mining fields (estimated size between 30,000 and 35,000 square kilometers) of equal value; the commission will reserve one of them for the Seabed Authority, according to the so-called banking system, and the other one will automatically be awarded to the applicant (item 3b) within a period of 45 days. Every applicant can only claim one pioneer area (item 4).

In case of territorially overlapping fields of competing applicants, a binding UNCITRAL arbitration procedure will intervene (item 5). For this purpose the coordinates of the proposed fields must be registered before 1 January 1983 with the certifying state. Among themselves, all pioneer investors enjoy the same rank. Details of the dividing procedure are reserved for the reciprocal agreement among the pioneer states which must be concluded during the next few months.

According to the so-called split contract system, which is a replica of the convention, the allocation of a pioneer area (item 3b) entitles first of all only to "pioneer activities" (item 6), which means targeted exploration activities including test mining, but it does not mean commercial mining. For production at a later date, a production permit (item 9a) is required which will be issued by the Seabed Authority through the normal application procedure in accordance with the convention (item 8a); applications can be made no sooner than 6 months following the implementation of the convention, when all home states of the consortia must have ratified the convention (item 8c). This ratification requirement is intentional.

In opposition to the wishes of the industrial countries, a production licensing procedure will be established within the framework of production quantity limitations of article 151, which is coupled to the rate of increase of nickel consumption.⁶⁸ If the remaining objective prerequisites have been fulfilled, the permit will be granted automatically within 30 days (items 9a and b). If there is an indication that the production quantity limit will be exceeded by several applicants and the applicants cannot agree among themselves how to divide the area, the Seabed Authority will make the final decision in accordance with appendix III (item 9g). It is important

that at the time of production permits pioneer investors have priority over all other applicants. An exception, however, is made for "Enterprise," which receives two mining fields at the outset, but its general preferential treatment--when compared to other applicants--does not set in until all pioneer investors have received their production permits (item 9a). The second "Enterprise" mining field was not included in the text until the final moments of the negotiations.

The registration fee is \$500,000 and is divided into two equal amounts, half for the registration and the other half for the later production permit (item 7a). In addition there is a fixed annual levy of \$1 million (item 7b).

In the interest of a speedy expansion of "Enterprise," pioneer investors are obligated to explore the area reserved for "Enterprise" against later reimbursement of their expenses (including interest) and they must provide training assistance and technology transfer in accordance with the regulations of the convention (item 12a). The requirement of granting financial assistance to "Enterprise" is not directed at the investors but their certifying states (item 12b). It means that the Preparatory Commission is assuming a kind of a trustee role for the "Enterprise," as long as it has not yet been established. The authority on its part is obligated to respect the rights and duties which are granted by the pip system (item 13) until the pip system is replaced by the implementation of the convention (item 14; so-called security of tenure). Section 5 of article 308,⁶⁹ which was inserted later, provides permanence to the decisions of the Preparatory Commission.

As a result, it can be ascertained that the pip system contains an exploration and a mining field guarantee for pioneer investors for one field each, if the applying states sign and ratify the convention. The text demands that the production quantity limits be observed and establishes the Preparatory Commission as the licensing authority. Furthermore the text promotes the expansion of "Enterprise" due to the reservation of fields, technology transfer and training assistance and thus realizes the parallel system already during the pip phase.

In other words, it is the preliminary application of the convention; the only difference is that pioneer investors, in contrast to later applicants, have a guaranteed option with respect to the beginning of production, in case the state ratifies the convention.

Therefore the criticism voiced by the developing countries misses the mark by calling the pip system an "interim convention" and saying that it makes the convention itself superfluous by sanctioning national legislations and the planned reciprocal agreement, the object of which is to be the guarantee of national fields. The role of the certifying states--in other words, the national element in the convention--has been reduced to information and guarantee duties toward the Programming Commission.

The economic significance is the fact that the first generation of deep-sea enterprises could work under the full utilization of the production quantity for the rest of this century. The effect of the production quantity limit, which was placed in the convention text jointly by the developing countries and terrestrial mining producers like Canada and Australia will have the effect of an exclusion of other parties interested in mining in addition to the recognized pioneer investors, because according to all the information available, article 151 will only allow six to eight mining units. Therefore, for the time being, the exploitable fields of the "common heritage of mankind" have been distributed. The trend toward dividing the oceans has reached the deep sea.

Summary

In summation, the state of the new LOS order represents a challenge for every state to develop its own active ocean policy which is oriented toward the possibilities and dangers of the new Law of the Sea and makes the best of a bungled situation. National rights of accessibility to ocean resources and free traffic and user rights are just as important as the interest in guaranteeing peace on the seas. It is expected that the conclusion of the LOS negotiations in New York will not end international LOS discussions, but it will be a departure point for a variety of international, regional and bilateral negotiations. The first example of these continuing negotiations should be the planned reciprocal agreement of industrial countries interested in deep-sea mining--so-called like-minded states. Another example for the regionalization of the oceans could be provided by the EC ocean which--in case Spain and Portugal should join the EC--would make a large, interconnected ocean area in the northeast Atlantic available to the general application procedure of European agreements, which are marked by freedom of movement, freedom of settlement and a ban on discrimination and which offer equal opportunities for member states of the EC also with respect to the utilization of the sea.

FOOTNOTES

1. Protocol of the final sessions from the document series A/Con 62/SR 176 to 182 (as far as they are available to date); cf. "United Nations Press Release" SEA/494, 30 April 1982 (Round-up Session).
2. All article references are based on the convention draft A/Conf 62/L 78 28 August 1981, unless indicated otherwise.
3. A/Conf 62/114, 24 August 1981
4. Statement by President Reagan on 29 January 1982; U.S. position paper, 24 February 1982 ("Approaches to Major Problems in Part XI of the Draft Convention on the Law of the Sea") and U.S. Book of Amendments, March 1982 ("The U.S. Proposals for Amendment to the Draft Convention of the Law of the Sea"); A/Conf 62/L 121, 13 April 1982 (United States and six Western industrial countries).

5. A/Conf 62/L 93 and Corr 1, 2 April 1982.
6. A/Conf 62/Sr 167, 14 April 1982.
7. A/Conf 62/L 96 till L 126, 13 April 1982.
8. A/Conf 62/L 132 and Corr 1 in addition to L 132 Add 1 and Corr 1, 23 April 1982.
9. Rules of Procedure A/Conf 62/30/Rev 3, New York, 1981, Rule 37.
10. A/Conf 62/Sr 174, 28 April 1982.
11. A/Conf 62/Sr 175, 28 April 1982.
12. Cf. footnote 3.
13. Zaire, A/Conf 62/L 197, 13 April 1982, ef. also Romania A/Conf 62/WS 24, 24 May 1982.
14. 30 states, A/Conf 62/L 117, 13 April 1982.
15. Lesotho, A/Conf 62/L 115, 13 April 1982.
16. Spain, A/Conf 62/L 109, 13 April 1982; cf. also A/Conf 62/Sr 176, 6 May 1982.
17. Turkey, A/Conf 62/L 120, 13 April 1982; cf. also A/Conf 62/Sr 176, 5 May 1982.
18. A/Conf 62/L 141 and Add 1, 29 April 1982.
19. Cf. A/Conf 62/Sr 181, 5 May 1982.
20. Cf. footnote 9.
21. Draft Convention, A/Conf 62/1 78, 28 August 1981 and Corr 1-8, A/Conf 62/1 93, 2 April 1982 and Corr 1, 5 April 1982. A/Conf 62/L 132 Add 1, 22 April 1982. A/Conf 62/L 137, 26 April 1982. A/Conf 62/L 141 Add 1, 28 April 1981.
22. A/Conf 62/L 93, item 6, 2 April 1982 and A/Conf 62/SR 181, p 2, 5 May 1982.
23. A/Conf 62/L 127, 13 April 1982, and A/Conf 62/120, 7 May 1982; does not contain financial obligations, but needs ratification by UN General Assembly.
24. Cf. A/Conf 62/SR 180, 5 May 1982.

25. United Kingdom, C 2/Informal Meeting//66, 16 March 1982 and A/Conf 62/L 93; cf. French counterproposal A/Conf 62/L 106, which was withdrawn.
26. Malacca Straits, A/Conf 62/L 145 and Add 108, 29 April 1982.
27. Romania and 29 additional states, A/Conf 62/L 117, 15 April 1982; cf also A/Conf 62/SR, 6 May 1982.
28. Cf. UN Doc E/Conf 71/3, New York, 1981.
29. A/Conf 62/L 121 and 122, 13 April 1982.
30. Cf. details: A/Conf 62/L 93. A/Conf 62/L 132 Add 1. A/Conf 62/L 141 Add 1. A/Conf 62/L 142 Add 1.
31. Cf. Preliminary report of the Secretary-General A/Conf 62/L 84, 2 March 1982 and Add 1, 16 March 1982.
32. Summarizing presentation in president's report: A/Conf 62/L 86, 26 March 1982.
33. A/Conf 62/L 137, 26 April 1982; cf. British objection in A/Conf 62/SR 176, 6 May 1982.
34. Resolution 1, item 2.
35. Appendix IX, A/Conf 62/L 93, 2 April 1982.
36. Cf. A/Conf 62/L 93 Appendix IX, art 4, sec 6, which contained a discrimination ordinance which was later taken out, however, when Belgium objected (A/Conf 62/L 119), cf. A/Conf 62/L 132 Add 1.
37. A/Conf 62/L 94, 2 April 1982.
38. A/Conf 62/L 132 Add 1; cf. Precursor: A/Conf 62/L 94, 2 April 1982.
39. Cf. Resolution I, item 2.
40. Cf. art 156, sec 3.
41. A/Conf 62/SR 177, 6 May 1982.
42. WG 21/Informal Meeting 17, 26 August 1981.
43. A/Conf 62/C 1/L 30, 29 March 1982.
44. A/Conf 62/SR 158-166.
45. A/Conf 62/L 94, 2 April 1982.

46. A/Conf 62/L 121, 13 April 1982.
47. A/Conf 62/L 132 Add 1, 22 April 1982 and L 142 Add 1, 29 April 1982.
48. Item numbers refer to the resolution text in documents A/Conf 62/L 94 and L 142 Add 1.
49. A/Conf 62/L 121, 13 April 1982, p 17.
50. Cf. WG 21/Informal Paper 23, 26 March 1982.
51. Soviet Union A/Conf 62/L 125, 13 April 1982.
52. A/Conf 62/L 121, 13 April 1982.
53. Resolution I, A/Conf 62/L 94 supplemented through L 132 Add 1, 22 April 1982.
54. TPIC/1, 8 March 1982, with reference to the background of the pip proposals; cf. also Jenisch: "Bridging the Gap for Seabed Mining" in "San Diego Law Review No 18, 1981, pp 409-413.
55. A/Conf 62/C 1/L 30, 29 March 1982.
56. TPIC/2, 15 March 1982.
57. TPIC/3, 19 March 1982 supported by Soviet Union; cf. also A/Conf 62/L 116, 13 April 1982.
58. TPIC/5, 25 March 1982.
59. TPIC/4, 22 March 1982.
60. A/Conf 62/L 94, 2 April 1982; cf. also A/Conf 62/C 1/L 30, 29 March 1982.
61. A/Conf 62/L 122, 13 April 1982.
62. Soviet note, 18 April 1982, unpublished working paper; cf. also TPIC/6, 6 April 1982.
63. Comparable contrast of all consortia in "Seabed Mineral Resource Development," New York, 1982, ST/ESA 107, Add 1, 1 April 1982.
64. People's Republic of China, TPIC/7, 19 April 1982; cf. also Letter of the FRG Delegation, A/Conf 62/L 151, 7 May 1982.
65. A/Conf 62/L 132/Add 1, 22 April 1982 and L 141/Add 1, 28 April 1982.
66. Cf. Appendix IV, Statute of the Enterprise, art 11, sec 3.

67. Item numbers refer to documents A/Conf 62/L 132 Add 1 and L 141 Add 1.
68. In this respect the delicate question arises whether there will even be an increase in nickel consumption during the period specified for ascertaining the permissible production quantities in the world; cf. details in art 151, sec 2b.
69. Cf. A/Conf 62 C 1/L 30, 29 March 1982, p 6, and A/Conf 62/L 93, 2 April 1982, p 3.

8991

CSO: 5200/2117

SCHRAM: ICELAND CAN BAN SALMON FISHING BEYOND 200-MILE ZONE

Reykjavik MORGUNBLADID in Icelandic 18 Jul 82 p 48

[Article: "Iceland Can Ban Salmon Fishing beyond 200-mile Zone"]

[Text] It is stated, among other things, in Article 66 of the Law of the Sea Treaty drawn up last April, that home countries are responsible for the welfare of salmon runs that breed in their rivers and that these countries may set maximum catches for those salmon runs that leave their rivers for the ocean, pursuant to discussions with the countries fishing the runs. According to this article, Iceland has the right to limit the catches of Icelandic salmon taken by other countries outside Iceland's 200-mile zone. This would be grounds to ban fishing the runs entirely, if this were allowed, although the article in question speaks only of catch limits. These facts came to light in an article published by Professor Dr. Gunnar G. Schram in MORGUNBLADID yesterday.

It is also stated in the article that the reservation is made in this area that there be discussions with other countries fishing Icelandic salmon on conditions for catch limitations. Dr. Schram says in his article: "There is nothing in Article 66 on preconceptions with regard to limited catches. The clause can scarcely be interpreted in any other manner than that Iceland can set catch sizes unilaterally since there was no intention that other countries would have a veto power in this area and nothing about this in the text of the agreement."

In Dr. Schram's view this clause is extremely important for countries considering their salmon runs to be endangered due to overfishing by other countries. On the other hand, achieving catch limitations may prove difficult since it will have to be proven what proportion of Icelandic salmon is caught by foreign fishing ships. That will only be achieved through careful research.

It is also mentioned in the article that another treaty article contains a clause to the effect that if salmon enter the economic jurisdiction of another country that country shall cooperate with the home country of the salmon on

necessary protection and administrative measures to maintain the salmon runs. Iceland could request that the Faroese Islands take part in carrying out those protection measures thought necessary to protect the Icelandic salmon runs against overfishing. The Faroese could not refuse since the agreement directly requires them to do this, said Dr. Schram.

The Law of the Sea Treaty has still not been ratified but Denmark (and through Denmark the Faroese Islands) has approved it and will sign in a few months. "Thus they have, at the very least, a moral obligation to carry out the provisions of the treaty," said Dr. Schram in his article.

9857

CSO: 5200/2100

PAPER URGES GOVERNMENT TO STAND FIRM AGAINST USSR ON LIMIT IN BALTIC

Stockholm SVENSKA DAGBLADET in Swedish 25 Jul 82 p 2

[Editorial: "Border in the Sea"]

[Text] Sweden's border with the USSR in the Baltic has become a special election theme since the Swedish political debate is now focusing on Gotland. Statements and denials about proposals and bids are now crossing each other. The leaders of the Moderate Coalition Party, Adelsohn and Bohman, both criticized the government during their visits at fishing villages in Gotland and at the west coast on Friday.

The division of the continental shelf and fishing in the Baltic has to be made between the two countries--there is agreement in this respect. But the Soviet Union claims that the dividing line shall be drawn between the Swedish mainland and the Baltic countries, not counting Gotland. This is an unreasonable point of view, without support in public international law.

The dispute has now lasted almost 13 years. During negotiations between Sweden and the Soviet Union this year in January there was obviously a discussion about drawing a border that would mean Sweden giving up smaller parts of the controversial area. It would instead finally be possible to draw up a definite border for fishing and the continental shelf. The Soviets did not agree to this. The people on Gotland lashed out as did the moderates. Foreign Minister Ola Ullsten now denies that the government has presented a proposal for a compromise. But he hints that something might have happened at the official level.

This is not a nice way to arrange for the retreat. Maybe there has never been a "proposal," but there have been discussions anyway. It seems unbelievable that officials would operate on their own.

The government simply got no answer from the Soviet Union and it has found the domestic criticism against concessions too strong. Therefore the negotiation table is now clean, according to Ullsten. That means that Sweden stands by the middle line between Gotland and the Baltic coast.

It is urgent to find a solution to the dispute. But fishing in the Baltic is especially important for Sweden now that the North Sea is closed. And the public international law is on Sweden's side. Therefore, the Swedish government must have as much ice in the stomach as the Soviet government.

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Oct. 8, 1982